



**UNITED STATES DEPARTMENT OF COMMERCE
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 08/574,194 | 12/18/95 | MILKS | R 7389-002-25 |

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12M2/0107

EXAMINER

BURN, B

ART UNIT

1209

PAPER NUMBER

DATE MAILED:

10
Remailed
01/07/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

"See Attachment"

Time will be restarted from the date of this letter.
Applicant never received a copy of the office action mailed paper #10.



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Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/574,194

Applicant(s)
Milks

Examiner
Brian M. Burn

Group Art Unit
1209



☒ Responsive to communication(s) filed on Jan 17, 1997

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-40 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-40 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1209

Claims 1-40 are pending in this application.

Claims 1-11 are rejected on the grounds of estoppel. Applicant admitted in the 37 CFR 175(a) declaration that claims 1-11 are unpatentable. As Applicant regards the claims unpatentable, there is no good reason why the PTO should be put to the burden of considering the question of patentability. *Ex parte Grall et al.*, 207 USPQ 710 (POBA 1978); *Slivinski v. Lane*, 1922 CD 4, 295 OG 464; *Griffith v. Dodgson*, 1905 CD 200, 166 OG 1731.

Claims 12-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,177,107 to Meer et al.

Meer et al. teach a method for the control of fire ants. This reference discloses the vegetable oil-insoluble anionic fluorochemical surfactants of the instant claims. The reference teaches the necessity of impregnating granular carriers such as grits with the insecticide. In addition, Meer et al. teach that edible oils, such as soybean oils, are suitable attractants.

In Example 5, Meer et al. teach that the insecticide may be dissolved in a volatile solvent, and the resulting mixture may be deposited on a carrier. The solvent is then permitted to evaporate, leaving the insecticidal bait behind.

The instant invention would have been *prima facie* obvious to one of ordinary skill in the art at the time it was made, because the present claims are fairly suggested by the prior art of record. The ordinary practitioner would have been motivated to make the instant invention because it is clear that the vegetable oil-insoluble compounds are sufficiently insecticidal. It would appear that Applicant has reversed the steps in which the insecticidal bait is prepared

Art Unit: 1209

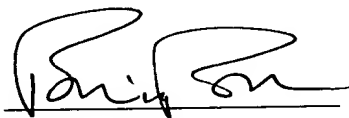
(impregnating the carrier with the insecticide and then adding the soybean oil, as opposed to dissolving the insecticide in soybean oil and impregnating the carrier with the resulting mixture). No unexpectedly superior advantage is noted by this method of preparing the insecticidal bait. Applicant is invited to submit evidence demonstrating that Applicant's composition is unexpectedly superior, in kind or degree, to patentee's composition.. Absent such evidence, the claims must be refused.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian M. Burn whose telephone number is (703)308-4525. The examiner can normally be reached on Monday thru Friday from 8:00AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful and the matter is urgent, the supervisory primary examiner, Jose Dees, can be reached on (703)308-1235. The fax phone number for this Group is (703)308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Brian M. Burn
Primary Examiner
Group 1209